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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re Marriage of ANNA M. and
LOUIS P. YEAGER.

2d Civil No. B289610
(Super. Ct. No. SD032322)
(Ventura County)

ANNA M. ANKA,

Respondent,

v.

LOUIS P. YEAGER,

Appellant;

LISA HELFEND MEYER,

Objector and Respondent.

The father of a child moved for sanctions against an attorney and her client for disclosing confidential information contained in a child custody evaluation report in violation of

Family Code¹ sections 3025.5 and 3111. The trial court imposed sanctions against the attorney and her client jointly and severally payable to the superior court. We affirmed the award of sanctions against the attorney, but reversed as to her client. (*In re Marriage of Anka & Yeager* (2019) 31 Cal.App.5th 1115.) While the appeal was pending, the father made a motion for attorney fees and costs for the appeal as additional sanctions. The trial court denied the motion. We affirm. A party cannot be sanctioned twice for the same misconduct.

FACTS

Anna and Louis Yeager had a child born of their marriage. When their marriage was dissolved, child custody issues remained. Anna then married Paul Anka and a child was born of that marriage.² When the Anka marriage was dissolved, child custody issues relating to the Anka child remained. Anna became simultaneously involved in two custody matters, represented in both by attorney Lisa Helfend Meyer.

Louis Yeager (Yeager) submitted a declaration in the Anka matter accusing Anna of substantial misconduct with both children. The declaration resulted in Meyer deposing Yeager in the Anka matter. During the deposition, Meyer asked Yeager questions that disclosed information contained in the confidential child custody evaluation report prepared for the Yeager matter.

Yeager moved for sanctions against Meyer and Anna pursuant to Family Code sections 3025.5 and 3111 for disclosing the confidential information. Yeager's motion did not include a

¹ All statutory references are to the Family Code unless otherwise stated.

² We refer to some parties by their first names to avoid confusion.

request for attorney fees.

The trial court granted the motion and sanctioned Meyer and Anna jointly and severally to pay \$50,000 to the superior court. The court ordered each party to pay his or her attorney fees and costs. Meyer and Anna appealed. Yeager did not appeal the portion of the order requiring him to pay his own fees and costs.

While the appeal was pending, Yeager's child moved for attorney fees pursuant to California Rules of Court, rule 5.242(i) and (k)(3)(M), on the rights and responsibilities of attorneys appointed to represent a child in family law proceedings. Meyer settled the matter by agreeing to pay the child's attorney fees on appeal.

Yeager moved for attorney fees on appeal pursuant to the sanctions provision of section 3111, subdivision (d). He did not ask for fees as a matter of financial need pursuant to section 2030. The trial court denied Yeager's motion "without prejudice to the Court of Appeal directing the trial Court to change its determination."

DISCUSSION

I.

Yeager contends section 3111, subdivision (d) authorizes the award of attorney fees on appeal.

Section 3111, subdivision (d) authorizes the trial court to impose monetary sanctions for an unwarranted disclosure of a confidential child custody report. The subdivision provides that the sanctions "may include reasonable attorney's fees, costs incurred, or both"

Undoubtedly, section 3111, subdivision (d) gives the trial court the discretion to award attorney fees and costs as all or part

of the sanctions. But in Yeager's original request for sanctions, he did not request that the sanctions include his attorney fees and costs. The trial court awarded Yeager nothing. Instead, the court ordered that the sanctions be paid to the superior court and that each party is to bear his or her own costs.

Yeager is now asking for additional sanctions in the form of attorney fees on appeal. But Meyer committed no wrong by appealing. (See *In re Marriage of Flaherty* (1982) 31 Cal.3d 637, 650 ["Counsel and their clients have a right to present issues that are arguably correct, even if it is extremely unlikely that they will win on appeal"].) The wrong Meyer committed was disclosing confidential information. The trial court sanctioned her for that misconduct prior to Yeager's request for attorney fees. Meyer cannot be sanctioned twice for the same wrong.

In *Sabado v. Moraga* (1987) 189 Cal.App.3d 1 (*Sabado*), the trial court sanctioned an attorney for instructing his client not to answer any further questions at a deposition. When the plaintiff subpoenaed the client's wife to a deposition, the attorney stated that he did not represent the client's wife, but advised her that based on the marital communications privilege, she was not required to testify. At plaintiff's request, the trial court imposed additional sanctions on the attorney for plaintiff's "continued difficulty in obtaining timely discovery." (*Id.* at p. 8.) The attorney appealed the additional sanctions.

The Court of Appeal reversed. The court determined that the attorney's gratuitous advice to his client's wife was not sanctionable conduct. The court rejected plaintiff's argument that sanctions should be based on the attorney's conduct throughout the discovery process. The court stated, "Where . . . subsequent conduct is not the type that warrants the

imposition of sanctions, past conduct which has already been considered by a court cannot justify the imposition of additional sanctions” (*Sabado, supra*, 189 Cal.App.3d at pp. 10-11.)

Here, as in *Sabado*, the trial court had previously imposed sanctions for Meyer’s wrongful conduct. It cannot now impose additional sanctions for the same conduct.

II.

Yeager contends California Rules of Court, rule 5.14 also authorizes an award of attorney fees and costs.

Rule 5.14 (c) and (e) gives the trial court the discretion to impose monetary sanctions, including reasonable attorney fees and costs to the person aggrieved, on a person who without good cause fails to comply with the Rules of Court.

Even assuming Meyer’s conduct in disclosing confidential information violated the Rules of Court, Yeager’s contention suffers from the same defect as his argument for sanctions under section 3111, subdivision (d). Meyer cannot be sanctioned twice for the same misconduct. (*Sabado, supra*, 189 Cal.App.3d at pp. 10-11.)

III.

Finally, Yeager points to the trial court’s statement that its order is without prejudice to further directions from the Court of Appeal. Yeager claims the trial court did not rule substantively on his motion. But the trial court’s denial of the motion is substantive. The trial court’s statement that its order is subject to further directions from the Court of Appeal is meaningless. All trial court orders are subject to further directions from the Court of Appeal.

DISPOSITION

The judgment (order) is affirmed. Costs on appeal are awarded to respondents.

NOT TO BE PUBLISHED.

GILBERT, P. J.

We concur:

PERREN, J.

TANGEMAN, J.

John R. Smiley, Judge

Superior Court County of Ventura

Goldenring & Prosser, Peter A. Goldenring and Edwin S.
Clark for Appellant Louis P. Yeager.

Law Offices of Honey Kessler Amado, Honey Kessler
Amado and James A. Karagianides for Respondent Anna M.
Anka and Objector and Respondent Lisa Helfend Meyer.